

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 876  
By: Moncrief  
Health & Human Services  
4/9/2001  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, there are federal standards relating to emergency behavioral interventions in psychiatric and medical facilities and psychiatric residential treatment centers. However, each health and human services agency promulgates its own rules regarding the appropriate use of restraints and seclusions. The lack of consistency among agencies raises concerns related to possible injury or death associated with the use of restraints and seclusions, particularly in cases involving children. C.S.S.B. 876 requires consistent standards for health care facilities in the state, to be administered through the Health and Human Services Commission, in order to provide an equal level of patient protection and care regardless of the setting, payment source, or characteristics of the populations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to a health and human services agency that regulates the care or treatment of a resident in SECTION 1 (Sections 322.004, 322.006, 322.007, and 322.010, Health and Safety Code), and to the commissioner of health and human services in SECTION 1 (Section 322.010, Health and Safety Code) and to the Health and Human Services Commission in SECTION 1 (Section 322.010, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4G, Health and Safety Code, by adding Chapter 322, as follows:

#### **CHAPTER 322. ADMINISTRATION OF RESTRAINT, SECLUSION, AND EMERGENCY PSYCHOACTIVE MEDICATION IN CERTAIN HEALTH CARE FACILITIES**

Sec. 322.001. FINDINGS. Sets forth legislative findings regarding individual rights.

Sec. 322.002. DEFINITIONS. Defines “facility” and “health and human services agency.”

Sec. 322.003. APPLICABILITY. Provides that this chapter applies to a health and human services agency that regulates the care or treatment of a resident of a facility.

Sec. 322.004. ADOPTION OF PROCEDURES. Requires a health and human services agency by rule to adopt procedures for administering to a resident of a facility: mechanical restraint; personal restraint; seclusion; emergency psychoactive medication; and supportive and protective devices. Requires the procedures to be consistent with this chapter and with the right of a resident to be free from certain abusive behaviors.

Sec. 322.005. STAFF TRAINING. Requires a facility to provide to its staff, annually or more frequently if necessary, competency-based training on the prevention and de-escalation of a resident’s aggressive behavior and the safe administration of mechanical and personal restraints.

Sec. 322.006. REPORT OF DEATH OR INJURY DURING OR AFTER RESTRAINT, SECLUSION, OR EMERGENCY PSYCHOACTIVE MEDICATION. (a) Requires a

facility to report to the appropriate law enforcement or regulatory agencies for investigation each death of or serious injury to a resident of the facility that occurs during the administration of, or less than 48 hours after the termination of the administration of, restraint, seclusion, or emergency psychoactive medication to the resident.

(b) Requires each health and human services agency by rule to adopt methods and procedures for reports required by Subsection (a) to be made by a facility under the agency's jurisdiction.

Sec. 322.007. REPORTS ON ADMINISTRATION OF RESTRAINT, SECLUSION, AND PSYCHOACTIVE MEDICATION. Requires a health and human services agency that regulates a facility to collect information each quarter related to the facility's administration to the facility's residents in emergencies of restraint, seclusion, and psychoactive medication. Requires certain information to be included. Requires the agency, annually, to submit an analysis of the information collected under this section to the Health and Human Services Commission (commission), the governor, and the presiding officer of each house of the legislature. Requires each health and human services agency by rule to adopt methods and procedures for reporting the analysis required by Subsection (c). Requires the agency to de-identify any information regarding individual residents or facilities.

Sec. 322.008. CERTAIN RESTRAINTS PROHIBITED. Prohibits a person from administering certain restraints to a resident of a facility.

Sec. 322.009. NEGOTIATED RULEMAKING. Requires a health and human services agency in adopting rules under this subchapter that affect a facility under the jurisdiction of the agency to use the procedures provided by Chapter 2008 (Negotiated Rulemaking), Government Code.

Sec. 322.010. MEMORANDUM OF UNDERSTANDING. (a) Requires the commissioner of health and human services and the health and human services agencies required to adopt rules under this chapter to execute a memorandum of understanding to ensure that procedures and definitions of terms adopted by the agencies in rules under this chapter are consistent among the agencies and consistent with federal and state laws and rules regarding the use of restraint, seclusion, or emergency psychoactive medication.

(b) Requires the Health and Human Services Commission to adopt the memorandum by rule.

(c) Requires the commissioner of health and human services and the health and human services agencies to review the memorandum annually and revise it as necessary.

SECTION 2. Requires a health and human services agency described by Section 322.003, Health and Safety Code, as added by this Act, to adopt rules as necessary to implement Chapter 322, Health and Safety Code, as added by this Act, not later than March 1, 2002.

SECTION 3. Effective date: September 1, 2001, except that SECTION 1 takes effect March 1, 2002.

### **SUMMARY OF COMMITTEE CHANGES**

Differs from the original as follows:

- Amends the caption.
- Refers throughout the bill to "administration" of restraint, seclusion, and emergency

psychoactive medication, rather than “use” of those methods.

- Removes the previously proposed designation of subchapters.
- Sets forth legislative findings not included in the previously proposed version as Section 322.001, Health and Safety Code, and redesignates subsequent proposed Sections 322.001-322.007 as 322.002-322.008.
- Removes certain previously proposed definitions.
- Defines “facility” to provide that an intermediate care facility be operated specifically by the Department of Mental Health and Mental Retardation (MHMR) and not the Department of Human Services and MHMR, as in the previously proposed definition.
- In Section 322.005, regarding staff training, removes a requirement that staff be trained in procedures for managing a resident’s behavior in an emergency and adds a requirement that the staff be trained in the safe administration of mechanical and personal restraints.
- In Section 322.006, adds a proposed Subsection (b) to grant rulemaking authority to a health and human services agency and add a requirement for that agency.
- Expands the title of Section 322.007, and makes further provisions regarding reports; also adds Subsection (d) to grant rulemaking authority to a health and human services agency and add a requirement for that agency.
- Adds new provisions by adding Sections 322.009 and 322.010.
- Deletes previously proposed Sections 322.008-322.223, which made specific provisions regarding the use of restraint, seclusion, or emergency psychoactive medication in certain facilities.
- In the implementation provision in SECTION 2, modifies the section number referenced in the previously proposed version to conform it to the redesignation in the substitute version, and changes the deadline from January 1, 2002, to March 1, 2002.
- In SECTION 3, the effective date clause, changes the effective date of SECTION 1 from January 1, 2002, to March 1, 2002.